

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN E. WILLIAMS III,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE et
al.,

Defendants.

CASE NO. C14-1089 MJP

ORDER ON MOTIONS TO
DISMISS, SECOND AMENDED
COMPLAINT

THIS MATTER comes before the Court on Defendants Football Northwest LLC d/b/a the Seattle Seahawks, First & Goal Inc., the Washington State Public Stadium Authority, and Ticketmaster LLC's Motion to Dismiss (Dkt. No. 72) and Defendants National Football League and NFL Properties LLC's Joinder and Motion to Dismiss (Dkt. No. 73). After the motions noted for the Court's consideration, Plaintiff John Williams III, who is proceeding pro se, filed a second proposed Amended Complaint (Dkt. No. 89), which the Court will construe as a motion for leave to file a second amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). Having considered the motions, Plaintiff's Response (Dkt. No. 78), Defendants'

1 procedural and substantive Replies (Dkt. Nos. 76, 77, 79, 80), Plaintiff's Surreply (Dkt. No. 81),
2 Defendants' responsive Surreply (Dkt. No. 83), Plaintiff's final Surreplies (Dkt. No. 84, 86), and
3 Plaintiff's proposed Amended Complaint (Dkt. No. 89) and Defendants' Motions to Strike the
4 proposed Amended Complaint (Dkt. Nos. 90, 91), the Court hereby DISMISSES the First
5 Amended Complaint with prejudice, DENIES leave to file a Second Amended Complaint
6 because amendment would be futile, and DENIES the Motions to Strike.

7 **Background**

8 Pro se plaintiff John E. Williams filed a complaint in the District of Nevada alleging
9 various constitutional and statutory violations arising out of the Seahawks' restriction of
10 primary-market ticket sales for the NFC Championship game between the Seahawks and the
11 49ers to buyers with billing addresses in Washington and other nearby states and provinces. (See
12 Dkt. No. 1.) Judge Andrew P. Gordon of the District of Nevada ordered the case transferred to
13 the District of Western Washington on July 11, 2014. (Dkt. No. 47.) Plaintiff filed an amended
14 Complaint on August 12, 2014 (Dkt. No. 66), and Defendants moved to dismiss. (Dkt. Nos. 72,
15 73.)

16 Plaintiff alleges he was denied an opportunity to purchase tickets to the January 16, 2014
17 game between the Seahawks and the San Francisco 49ers at Seattle's CenturyLink Field. (Dkt.
18 No. 66 at 6.) A 49ers fan and Nevada resident, Plaintiff alleges the geographic restriction on
19 ticket sales injured him because he was "excluded from the purchase of tickets" in the primary
20 market. (Id.) Plaintiff acknowledges that sales on the secondary market are not geographically
21 restricted, but alleges the secondary market offers tickets at inflated prices. (Id. at 9.)
22 Plaintiff further alleges various facts relating to the financing of the stadium itself (id. at 2–3),
23 the role of the NFL commissioner (id. at 4–5), and the tax-exempt status of the NFL (id. at 5).

1 Plaintiff acknowledges the NFL's position that it does not set policy for ticket sales by individual
 2 teams, but asserts the NFL has an obligation to promulgate a policy that complies with federal
 3 law. (Id. at 6.) Finally, Plaintiff alleges Ticketmaster complies with the Seahawks' geographic
 4 restriction policy and operates a market for secondary sales. (Id.)

5 Plaintiff seeks a declaration that the geographic restriction is unlawful on the basis of
 6 "economic discrimination and violation of public accommodation" (id. at 6–7) as well as
 7 damages for violation of the Washington Consumer Protection Act and its federal counterpart
 8 (id. at 7–8), for violation of the Sherman Act (id. at 8) and the Clayton Act (id. at 9), and for
 9 unjust enrichment (id. at 8–9).

10 Plaintiff's proposed Second Amended Complaint brings very similar claims for relief, but
 11 presents selected additional facts about the roles of individuals in the Defendant organizations
 12 and cites NFL By-Laws, while eliminating other facts about the Washington State Public
 13 Stadium Authority. (See Dkt. No. 89.)

14 Analysis

15 I. Legal Standard

16 The Federal Rules require a plaintiff to plead "a short and plain statement of the claim
 17 showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2). "To survive a motion to dismiss, a
 18 complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is
 19 plausible on its face.' " Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v.
 20 Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual
 21 content that allows the court to draw the reasonable inference that the defendant is liable for the
 22 conduct alleged." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 545). In determining
 23 plausibility, the Court accepts all facts in the Complaint as true. Barker v. Riverside Cnty. Office
 24

1 of Educ., 584 F.3d 821, 824 (9th Cir. 2009). The Court need not accept as true any legal
2 conclusions put forth by the plaintiff. Iqbal, 556 U.S. at 678.

3 II. Late Opposition and Pro Se Status

4 As Defendants observe (Dkt. Nos. 76, 77), Plaintiff's opposition to Defendants' Motions
5 to Dismiss was due September 15 according to Local Civil Rule 7(d)(3). LCR 7(d)(3) ("Any
6 opposition papers shall be filed and served not later than the Monday before the noting date.").
7 "Although we construe pleadings liberally in their favor, pro se litigants are bound by the rules
8 of procedure." Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995). Not only did Plaintiff file his
9 opposition after the noting date, on which the Court could begin to consider the motions, he has
10 also filed several surreplies that are not permitted by the rules without seeking the Court's leave.
11 In light of Plaintiff's pro se status, the Court exercises its discretion to consider the late
12 opposition and the surreplies, but requires Plaintiff to adhere to all procedural rules in the future.

13 III. "Economic Discrimination" and Public Accommodation

14 Plaintiff's request for a declaratory judgment is based on claims of "economic
15 discrimination" and violation of public accommodation laws. (Dkt. No. 66 at 6.) With respect to
16 the first claim, Plaintiff clarifies in his Response that it refers to the alleged economic harm done
17 to "the Economy in Seattle as well as the State of Washington State, since most of the tickets
18 sold was to locals in your market place." (Dkt. No. 78 at 10.)

19 Defendants Football Northwest LLC D/B/A The Seattle Seahawks, First & Goal Inc.,
20 The Washington State Public Stadium Authority, and Ticketmaster LLC (the "Seahawks
21 Defendants") correctly point out a free-standing assertion of "economic discrimination" does not
22 state a cognizable legal claim. Furthermore, Plaintiff lacks standing to complain about economic
23 harm done to the city of Seattle or Washington state, as he attempts to do in his Response. (See
24 Dkt. No. 78 at 10.)

1 The Seahawks Defendants hypothesize Plaintiff might have intended to assert a
 2 Privileges and Immunities Clause claim, which does concern certain kinds of discrimination by a
 3 state against citizens of another state in favor of its own citizens. (Dkt. No. 72 at 11–12.)
 4 However, as the Seahawks Defendants note, the privileges protected by the Privileges and
 5 Immunities Clause do not include recreational activities such as attending a football game. See
 6 Baldwin v. Fish & Game Comm’n of Montana, 436 U.S. 371, 388 (1978) (distinguishing
 7 unprotected “recreation” and “sport” activities from activities that are “means to the
 8 nonresident’s livelihood,” “basic to the maintenance or well-being of the Union,” or a
 9 component of the right to travel).

10 As for public accommodation, the Court agrees with the Seahawks Defendants that Title
 11 II of the Civil Right Act of 1964 does not extend to discrimination on the basis of state residence.
 12 See 42 U.S.C. § 2000a(a). Neither does the Washington equivalent, the Washington Law Against
 13 Discrimination. See RCW 49.60.215.

14 Plaintiff fails to state a claim for economic discrimination on the facts alleged.

15 IV. Washington Consumer Protection Act and “Federal Consumer Protection” Law

16 Next the Seahawks Defendants challenge Plaintiff’s invocation of the Washington
 17 Consumer Protection Act, which prohibits unfair or deceptive acts or practices in trade or
 18 commerce. See RCW 19.86.020. The Seahawks Defendants contend Plaintiff has not stated a
 19 claim under this provision because there was no unfair or deceptive act or practice, the first
 20 element of a WCPA claim. See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.,
 21 105 Wn.2d 778, 785 (1986). The Court cannot discern any allegations about an unfair or
 22 deceptive act or practice as the term is defined in the statute in Plaintiff’s Amendment
 23 Complaint; rather, the policy appears to be clear on its face. See id. (“A plaintiff need not show
 24 that the act in question was intended to deceive, but that the alleged act had the capacity to

1 deceive a substantial portion of the public.”) (emphasis in original). Plaintiff urges in his
 2 Response that the geographic sales restriction “makes it an unfair game to the Forty-Niners since
 3 the crowd gets so loud when the Forty-Niner Quarterback makes his call, it makes it an unfair
 4 game” (Dkt. No. 78 at 5); unfortunately, any inequity whose source is the volume of the
 5 CenturyLink crowd does not state a legal claim under the WCPA.

6 There is no statute entitled the Federal Consumer Protection Law (Dkt. No. 66 at 7) or the
 7 Federal Consumer Fraud Act (id. at 5). Assuming Plaintiff intended to refer to the Federal Trade
 8 Commission Act, as his Response suggests (see Dkt. No. 78 at 7–8), the claim fails because there
 9 is no private right of action under the “unfair or deceptive acts or practices” section of the FTCA.
 10 See 15 U.S.C. § 45(a); Dreisbach v. Murphy, 658 F.2d 720, 730 (9th Cir. 1981).

11 Plaintiff fails to state a claim under the WCPA or similar federal law.

12 V. Antitrust Claims

13 Defendants also move to dismiss Plaintiff’s antitrust claims pursuant the Sherman Act
 14 and Clayton Act. The Sherman Act claims depend as an initial step on a plaintiff establishing
 15 market power in a “relevant market.” See Tanaka v. University of Southern California, 252 F.3d
 16 1059, 1063 (9th Cir. 2001) (“Tanaka’s complaint alleges that the relevant geographic market is
 17 Los Angeles and the relevant product market is the ‘UCLA women’s soccer program.’ Neither of
 18 these ‘markets’ is appropriately defined for antitrust purposes, even at this stage of the
 19 litigation.”). Plaintiff’s threadbare allegations do not relate to competition between firms in a
 20 market, but to the exercise of a natural monopoly on sales of tickets to a single stadium. See
 21 Bushie v. Stenocord Corp., 460 F.2d 116, 120 (9th Cir. 1972) (“A manufacturer has a natural
 22 monopoly over [its] own products [u]nless the manufacturer used his natural monopoly to
 23 gain control of the relevant market in which his products compete, the antitrust laws are not
 24 violated.”).

1 The Clayton Act, meanwhile, applies solely to commodities. Tickets to a Seahawks game
2 are not tangible goods, but revocable licenses, so the Clayton Act does not apply. See Kennedy
3 Theater Ticket Servs. V. Ticketron, Inc., 342 F. Supp. 922, 925–27 (E.D. Pa. 1972).

4 Plaintiff fails to state an antitrust claim.

5 VI. Unjust Enrichment

6 Finally, Plaintiff alleges the Defendants—presumably, Ticketmaster—are unjustly
7 enriched by sales on the secondary market for amounts in excess of the face value. (Dkt. No. 66
8 at 8–9.) A plaintiff claiming unjust enrichment must plausibly allege facts supporting three
9 elements: “a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge
10 by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit
11 under such circumstances as to make it inequitable for the defendant to retain the benefit without
12 the payment of its value.” Young v. Young, 164 Wn.2d 477 (2008). Since Plaintiff cannot allege
13 he purchased a ticket on the secondary market (indeed, he alleges he was unable to attend the
14 game), he never conferred a benefit upon any Defendant. This claim fails as well.

15 VII. Amended Complaint

16 Under Federal Rule of Civil Procedure 15(a), the second attempt to amend a complaint
17 requires leave of the court. Although Defendants ask to strike Plaintiff’s proposed Amended
18 Complaint, their opposition stems from Plaintiff’s failure to formally request leave of the Court.
19 (See Dkt. No. 90 at 2; Dkt. No. 91 at 1–5.) Since the Court is interpreting Plaintiff’s proposed
20 Second Amended Complaint as a request for leave, the Court declines to strike Plaintiff’s
21 request. In deciding whether to grant a motion to amend, the court considers a number of
22 factors, including undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies
23 by amendments previously allowed, undue prejudice to opposing parties, harm to the movant if
24 leave is not granted, and futility of the amendment. Foman v. Davis, 37 U.S. 178, 182 (1962);

1 Martinez v. Newport Beach City, 125 F.3d 777, 785 (9th Cir. 1997). Courts should not grant
 2 leave to amend where amendment would be futile. See Nunes v. Ashcroft, 348 F.3d 815, 818
 3 (9th Cir. 2003). Plaintiff's proposed Second Amended Complaint contains new facts but they fail
 4 to address the deficiencies the Court has identified above. In addition, it recycles the same causes
 5 of action under new labels. (See, e.g., Fifth Claim for Relief (Unjust Enrichment), Dkt. No. 89 at
 6 8 (addressing Sherman Act violations); Third Claim for Relief (Violations of Sherman Act), Dkt.
 7 No. 66 at 8 (using the same language to address the same Sherman Act violations).) Because the
 8 proposed amendments would be futile, the Court denies leave to amend.

9 **Conclusion**

10 The First Amended Complaint fails to state a claim under Federal Rule of Civil
 11 Procedure 12(b)(6); the Court therefore GRANTS the motions to dismiss the Complaint. (Dkt.
 12 Nos. 72, 73.) Because further amendment as indicated by the proposed Second Amended
 13 Complaint would be futile, the dismissal is with prejudice. Finally, the Court DENIES leave to
 14 amend (Dkt. No. 89) but also DENIES Defendants' requests to strike the filing (Dkt. Nos. 90,
 15 91).

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 17 The clerk is ordered to provide copies of this order to all counsel.

18 Dated this 31st day of October, 2014.

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22 Marsha J. Pechman
 23 Chief United States District Judge
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